ANNUAL REPORT
OF THE
PENSION MANAGEMENT OVERSIGHT COMMISSION

Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204

October, 2009

INDIANA LEGISLATIVE COUNCIL
2009

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PENSION MANAGEMENT OVERSIGHT COMMISSION

Membership Roster

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Karen Tallian
Portage

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David Niezgodski
South Bend

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Steve Meno
New Palestine

Matthew Buczolich
South Bend

Kip White
Covington

Randy Novak
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Staff

Peggy Piety
Attorney for the Commission

Allen Morford
Attorney for the Commission

James Sperlik
Fiscal Analyst for the Commission

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at http://www.in.gov/legislative/.

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Indiana General Assembly enacted legislation (IC 2-5-12) directing the Pension Management Oversight Commission (Commission) to do the following:

> (1) Study the investment and management practices of the boards of the public retirement funds.
> (2) Determine what constitutes adequate wage replacement levels at retirement (including benefits from public retirement funds and Social Security) for public employees.
> (3) Study the impact of federal law and proposals concerning pensions, annuities, and retirement benefits.
> (4) Study the retirement funds established in IC 36-8.
> (5) Study methods and levels of funding for public retirement funds.
> (6) Study other topics as assigned by the Legislative Council.
> (7) Study other topics as directed by the Commission's chair.

The Commission consists of 12 members: four Representatives, 4 Senators, and 4 lay members who must be experts in the areas of finance, investments, or pension fund management. The chair of the Legislative Council appoints the chair of the Commission.

The Legislative Council assigned the following additional responsibilities to the Commission in 2009:

> (1) Study the effect of a possible retroactive date for withdrawal of a Public Employees' Retirement Fund (PERF) or Indiana State Teachers' Retirement Fund (TRF) member's Annuity Savings Accounts (ASA), specifically with respect to cessation of employment by, and withdrawal of annuity savings accounts of members of PERF and TRF. (HCR 96)
>
> (2) Study whether an individual who has been terminated from employment must file a wage claim with the Indiana Department of Labor (DOL) before filing a civil lawsuit seeking recovery of unpaid wages under IC 22-2-5-2. (SEA 533)

II. INTRODUCTION AND REASONS FOR STUDY

Since its inception in 1985, the Commission has provided a bipartisan forum for the study of proposed changes in the laws governing Indiana's public pension funds. This year the Commission reviewed issues raised by PERF and TRF and various pension stakeholders.

The Commission determined that it would review the following issues.

A. PERF Issues

PERF brought the following issues for review by the Commission:

(1) Withdrawal by a member from a member's ASA before the member is eligible to receive a retirement benefit (HCR 96).
(2) Role of Treasurer of State in certain funds administered by PERF.

B. TRF Issues

TRF brought the following issues for review by the Commission:

(1) Establish a one year statute of limitations for claims of error regarding creditable service or benefit determinations.
(2) Allow TRF to establish rules to allow a member to make designations among the member's beneficiaries in unequal increments.
(3) Reduce from 30 to 15 the number of days after which TRF may assess penalties for late employer contributions.

C. Public Safety Issues

Tom Hanify of the Professional Firefighters Union of Indiana brought the following issues before the Commission:

(1) Allow a member of the 1977 Police Officers' and Firefighters' Pension and Disability Fund (1977 Fund) to enter the Deferred Retirement Option Plan (DROP) retrospectively.
(2) Review and possibly amend the physical and mental testing requirements that apply to members of the 1977 Fund.
(3) Remove the potential for a cost of living adjustment (COLA) decrease for members of the 1977 Fund.
(4) Provide a hiring preference for laid off police officers or firefighters.

D. 1985 Judges' Retiement System

Representative Niezgodski brought the issue of providing a state contribution for a magistrate to transfer PERF service credit to the 1985 Judges' Retirement System.

E. Wage Claim Disputes

This issue was assigned to the Commission by the Legislative Council. The Commission studied whether certain individuals who have separated from employment must file a wage claim with the DOL before filing a civil lawsuit seeking recovery of unpaid wages under IC 22-2-5-2.

III. SUMMARY OF WORK PROGRAM

During the interim following the conclusion of the 2009 special session of the General Assembly, the Commission met three times on the following dates:

September 16, 2009
September 28, 2009
October 19, 2009

All three meetings were held in the State House in Indianapolis.

IV. SUMMARY OF TESTIMONY

A. Reports to the Commission

(1) PERF's Annual Report

Terren Magid, Executive Director, presented PERF's 2009 report to the Commission.

Financial Position

Mr. Magid reviewed the magnitude of the recent global financial meltdown. Although PERF's financial performance has been stronger then most other states, PERF's total net assets declined 12.8% between August 31, 2008, and August 31, 2009. PERF's July 2009 valuation will be final in November, but PERF estimates that it remains well funded at 93%. A retirement plan funded in excess of 80% is considered well funded.

PERF projects that the employer contribution rate will increase in FY 2011. The exact amount of the increase depends upon final information from PERF's actuary in November. For the state, PERF estimates that the employer contribution rate will increase from 6.5% to between 7.0% and 7.25%. For political subdivisions, PERF estimates that the average employer contribution rate will increase from 7.1% to between 7.88% and 8.36%.

Operations Update

Mr. Magid discussed PERF's strong operational performance and a 92.5% customer satisfaction rating. PERF has received national recognition from the Public Pension Coordinating Council and the Government Finance Officers Association (GFOA) for excellence in its operations and funding. New customer service enhancements are under way, including a new financial system, daily valuation for ASAs, and a new employer wage and contribution system.

(2) TRF's Annual Report

Steve Russo, TRF Executive Director, presented TRF's 2009 report to the Commission.

Financial Position

He provided the following figures:

Description	**June 30, 2008**	**June 30, 2009**
Funding ratio for pre-1996 account	37.7%	35.1%
Funding ratio for 1996 account	104.1%	94.2%
TRF unfunded liabilities for pre-1996 account	$9.72 billion	$10.31 billion
TRF funding for 1996 account	$0.12 billion (positive)	$0.19 billion (negative)

TRF's net assets declined by 15.9% between June 30, 2008, and June 30, 2009, but have increased 7.2% to $7.72 billion between June 30, 2009, and August 31, 2009.

TRF is considered one of the poorest funded public plans in the United States, but the pre-1996 account is, by design, not actuarially prefunded. The 1996 account is prefunded and is in good shape. The FY 2009 market turmoil has had no impact on TRF's ability to pay benefits, and TRF has a positive cash flow of $12 million. A modest increase (from 7.0% to 7.5%) in the employer contribution rate for the 1996 account will be effective July 1, 2010.

Operations Update

TRF has received its first ever Certificate of Achievement for Excellence in Financial Reporting from GFOA.

TRF has increased member communications and outreach through:

(1) local one-on-one counseling;
(2) "Time in Career" based targeted communications; and
(3) online video seminars and retirement applications.

(3) Consolidation of the PERF and TRF Boards of Trustees

Mr. Magid and Mr. Russo discussed the consolidation, as proposed by SB 535 introduced during the 2009 session, of the PERF and TRF boards and governance structures into one entity that would oversee management of seven Indiana retirement funds (six PERF funds plus TRF).

Benefits of Consolidation

The benefits of consolidation include cost savings from economies of scale that would lead to lower investment expenses and better investment opportunities. There would also be a one-time administrative cost savings of $8.9 million and annual cost savings of $1.2 million. Consolidation would provide better customer service through the implementation of "one stop shopping" for members and employers. Consolidation would also allow for more efficient data sharing using a common and streamlined system. PERF and TRF are currently trying to capture some of these efficiencies without consolidation.

Potential Issues with Consolidation

A potential issue with consolidation as proposed in SB 535 is the board's makeup. SB 535 included prescriptive board membership requirements that would have limited the number of board members with relevant business experience, such as finance, institutional investment, accounting, and benefit administration. Mr. Magid said that more board member independence is better, because the funds must be run as trusts and comply with fiduciary duties. Mr. Russo reported that he had discussed the issue with pension personnel in other states and learned that, for all trustees, education and training is crucial, especially education about a trustee's fiduciary duties and responsibilities.

(4) A Status report on the implementation of the Retirement Medical Benefits Account established by SEA 501 (P.L. 44-2007)

Christopher Ruhl, Director of the Indiana State Budget Agency, presented the annual update on the implementation of the retirement medical benefits account (Account).The Account was established in 2007 by SEA 501-2007 for all state employees, including members of the General Assembly.

Mr. Ruhl reviewed the fiscal impact of the Account. For FY 2009, the cost of the program was about three times the amount of the funding. The general fund appropriation was $23 million from the cigarette tax. The total actual cost was $67.5 million, broken down as follows:

- $36.7 million for annual contributions.
- $33.6 million for bonus contributions.
- Minus $3.1 million in reversions from individuals who left state employment before full retirement.

The state also incurs an actuarial unfunded liability that must be reported under GASB 45. The liability occurs because the General Assembly in 2008 allow retirees to use the Account to purchase coverage in the state's self insured health plans. Claims expenses for retirees are significantly greater than the premiums they are charged creating an implicit subsidy that is paid by the state and active employees through higher premiums. The implicit subsidy is currently estimated at a $65 million unfunded liability, which would required an additional $7.5 million per year to actuarially fund.

Recent changes to the Account's operation include the creation of a dedicated trust fund to hold the general fund appropriations to the Account and an increase from $23 million to $28 million in the annual appropriation from the cigarette tax. However, the Account still has a $40 million funding gap. Eliminating or reducing contribution levels was proposed during the last legislative session, but the General Assembly maintained the current contribution levels in HEA 1001ss-2009.

The state is addressing the $40 million funding gap by charging dedicated fund agencies based on the number of Account participants each has. A reserve used to pay health insurance costs was also tapped, but funding of the reserve has been reduced by two-thirds for the current biennium.

(5) Section 401(h) Update

Kathryn Cimera, General Counsel for PERF, presented an update concerning the Section 401(h) account administered by PERF. In July 2007, PERF submitted a request for approval of the Section 401(h) account to the Internal Revenue Service (IRS). The IRS informed PERF that, because the request had been submitted "off-cycle", the IRS would not review it until after the IRS completed consideration of all "on-cycle" requests.

In January 2009, PERF submitted its "on-cycle" qualification request, and as part of that request, asked the IRS to consider the earlier submission concerning the Section 401(h) account as a part of PERF's "on-cycle" filing. The IRS has not yet assigned an agent to review PERF's filing.

(6) Status report regarding the implementation of SEA 478-2009 (P.L. 164-2009) which concerns improper worker classification

Sean Keefer, Deputy Commissioner of DOL, provided a brief update on the implementation of SEA 478, which requires the DOL, the Department of State Revenue, the Worker's Compensation Board, and the Department of Workforce Development to cooperate by sharing information concerning any suspected improper worker classification by a contractor in the construction industry.

DOL is reaching out to the other state agencies to implement the legislation. DOL's activities include identifying contacts in each agency, developing a data base for the referral of information about suspected misclassifications, and developing protocols to protect the confidentiality of the shared information. Mr. Keefer suggested that at some point the General Assembly may need to make a policy decision as to what misclassification means.

<u>B. PERF Issues</u>

(1). Eliminate Role of Treasurer of State as Treasurer of Certain Funds Administered by PERF

Steve Barley, PERF Deputy Director, and Kathryn Cimera, PERF General Counsel, indicated that HEA 1546-2009 (P.L.115-2009) eliminated the Treasurer of State as the treasurer of PERF and reassigned the Treasurer's duties to the PERF board and the executive director. Ms. Cimera stated that it would be helpful to make this change in other funds administered by PERF. Those funds include the:

(1) Prosecuting Attorney's Retirement Fund;
(2) 1985 Judges' Retirement System;
(3) 1977 Fund; and
(4) Legislators' Retirement System.

Ms. Cimera indicated that she believed the exclusion of these funds in HEA 1546-2009 was a technical oversight. She stated that PERF administers these funds and the Treasurer of State's current role is minimal.

(2) Withdrawal from ASA

Ms. Cimera testified that PERF requested changes regarding a member's ability to make a withdrawal from the member's ASA before the member is eligible to receive a retirement benefit. Preliminary Draft (PD) 3082 was distributed to the Commission members. It provides that certain members of PERF and TRF may withdraw the member's ASA if the member has separated from employment and is not employed in a covered position for 30 days. The PD also removes the requirement that certain members must be members of: (1) PERF after December 31, 2008; or (2) TRF after June 30, 2009, in order to request a distribution from the member's ASA.

C. TRF Issues

(1) Statute of Limitations

Mr. Russo explained that PERF has a one year statute of limitations for claims of error regarding creditable service or benefit determination. TRF currently does not have such a provision. Mr. Russo indicated that it would be helpful to have the same provision as PERF. Mr. Russo testified that TRF often receives requests that go back many years. These requests are difficult for TRF to administer.

Andrew Thomas, representing the Indiana Retired Teachers' Association (IRTA), stated that, at a minimum, a statute of limitations should not be less than two years. He indicated that many retirees move to other states or may be in Indiana for half of the year, making it difficult for those retirees to comply with a one year statute of limitations.

(2) Beneficiary Allocations

Mr. Russo testified that TRF members can only designate beneficiaries in equal shares. He suggested that the TRF board be granted the flexibility to adopt a rule allowing a member to make designations among the member's beneficiaries in unequal increments.

(3) Failure to Make Timely Contributions

Mr. Russo suggested reducing from 30 to 15 the number of days after which TRF may assess penalties for late employer contributions. Mr. Russo indicated that the safe harbor provision in many private pension plans is seven days.

D. Public Safety Issues

(1) Deferred Retired Option Plan (DROP)

Mr. Hanify of the Professional Firefighters' Union of Indiana proposed a DROP (back) program which would allow a member of the 1977 Fund to enter the DROP (back) on the date the member separates from service. The retirement benefit of the member entering the DROP (back) would be computed as if the member retired up to three years before the member's actual separation date. The member would receive a reduced monthly benefit based on the adjusted retirement date. In addition, the member would receive a lump sum equal to the product of the member's reduced monthly benefit times the number of months between the member's separation date and the earlier date selected by the member.

Rhonda Cook, representing the Indiana Association of Cities and Towns (IACT), testified that the IACT supports the DROP (back) proposal as long as the proposal was limited to the 1977 Fund. She also expressed concern about a potential increase in employer contributions.

Doug Todd, actuary for PERF, discussed various scenarios using a hypothetical fact pattern showing the effect on the 1977 Fund under various DROP options. Mr. Todd demonstrated that in situations where an employee's salary remained the same over a three year period prior to retirement, the DROP (back) option could result in a cost to the fund.

Richard Lenar, actuary for PERF, testified that the DROP (back) proposal would create a risk of adverse selection by members of the 1977 Fund. Adverse selection is the tendency of an individual to recognize his or her health status in selecting the option under a retirement system or insurance plan that tends to be most favorable to him or her. The employee will pick the best option for them knowing the actuarial value of their benefit at the time of retirement as well as on the DROP (back) date. The employee would likely choose the option with the highest actuarial value.

Mr. Todd explained the actuarial effect on the 1977 Fund under a partial lump sum option. He explained that this option calculated the benefit on the retirement date instead of the DROP (back) date. This removes the risk of additional costs to the fund as well as the risk of adverse selection. The employee would still receive a lump sum distribution with a reduced retirement benefit.

Tom Hanify testified that he supported the partial lump sum option payment (PLOP).

Ken Gilliam, representing the Indiana Fire Chiefs Association (IFCA), testified in support of the lump sum distribution proposal if it would not have a negative impact on the 1977 Fund.

(2) Hiring Preference for Laid Off Police Officer or Firefighter

Mr. Hanify proposed adding language to the Indiana Code that would create a hiring preference for a police officer or firefighter laid off by another local unit. He indicated that the proposed language would make it optional for the hiring authority to include a hiring preference. The local units would be able to save costs associated with training a police officer or firefighter laid off by another local unit. Mr. Hanify indicated that the employee would still have to pass a background check and PERF mental and physical requirements.

Rhonda Cook testified that the IACT would support a proposal for a hiring preference if the provision was optional for the local unit.

Ken Gilliam testified that the IFCA supports the proposal as long as it is optional.

(3) Physical and Mental Testing

Mr. Hanify suggested that the PERF board should be required to review mental and physical testing requirements for 1977 Fund applicants every five years. Currently, the Indiana Administrative Code at 35 IAC 2-9-4 requires police officers and firefighters to take the Minnesota Multiphasic Personality Inventory (MMPI).

Rhonda Cook testified that the IACT did not oppose a proposed requirement for the PERF board to review the 1977 Fund mental and physical testing requirements. She indicated that the mental and physical testing should be re-done if an employee has been laid off for more than three years.

Ken Gilliam testified in support of the proposal.

(4) Removal of Potential Cost of Living Adjustment (COLA) Decrease for 1977 Police Officers' and Firefighters' Pension and Disability Fund

Mr. Hanify asked the Commission to amend the Indiana Code to remove the possibility of a decrease in the 1977 Fund pension benefit because of a negative COLA.

Doug Todd testified that the proposal would not have a fiscal impact.

Ken Gilliam testified in support of the proposal.

E. Wage Claim Disputes

Sean Keefer, DOL Deputy Commissioner, and Rick Ruble, DOL Legal Counsel, explained that the structure of the current statutes governing wage claims is confusing and treats employees differently depending upon whether they quit, or are fired or laid off. An employee who quits may file a lawsuit or a claim with the DOL, while an employee who is fired or laid off must first file a claim with the DOL before filing a lawsuit. The current statutes have not been amended since before World War II. Mr. Ruble provided information that the number of wage claims filed with the DOL is steadily increasing. In 2005, the DOL averaged 60 wage claims per month; by 2007, the monthly average was 140. The amount of a wage claim filed with the Department typically ranges from $200 to $3,000. If a claim is over $6,000, the DOL must refer the claim to the Attorney General, who contracts with private counsel to handle the claims.

Senator Tallian described certain scenarios where it is unclear whether the employee quit or was fired. She also described situations in which an employee may have a claim for both back wages and for future wages under a contract dispute. Under current law, the employee could be required to file two suits to resolve the dispute. Some cases involve multiple employees in plant lay-offs or plant closures that are not necessarily considered an industrial dispute. In such situations, Senator Tallian indicated that submission to DOL for an initial determination may alleviate the need to file multiple court cases.

Senator Tallian suggested that an employee should have the option to elect to file a complaint with DOL for claims less than $6,000, regardless of whether the employee has voluntarily or involuntarily separated from employment. The larger claims should be reserved for a trial court. In certain situations involving multiple claimants, mandatory review by DOL should be required.

At the October 19th meeting, Senator Tallian reported agreement among the various groups interested in this topic that administrative exhaustion should not be required before an employee files a wage claim. However, she did not have a bill draft to present to the Commission at that time.

F. 1985 Judges' Benefit System

Representative Niezgodski brought the issue of providing a state contribution for a magistrate to transfer PERF service credit to the 1985 Judges' Retirement System. He stated that some magistrates could not afford to contribute the amount necessary to transfer service credit.

Mr. Craig Bobay, who is the Magistrates' Representative to the Indiana Judges' Association, expressed concern that new judges have the option to purchase prior PERF service credit at six percent of the amount they would have contributed to the judges pension had they been a judge when accruing those PERF benefits. Current law requires magistrates to purchase the service credit at the total cost of service. Mr. Bobay stated that this requirement made it difficult for older magistrates with more service to transfer PERF service credit.

Doug Todd described why the cost to transfer service credit is expensive. He compared the:

(1) benefit formula;
(2) form of benefit; and
(3) post-retirement benefit increases;

for a member of PERF with a member of the Judges' 1985 Benefit System.

Doug Todd, made a report on the cost of transferring magistrates' PERF service credit to the 1985 Judges' Retirement System.

Mr. Todd based his analysis on PD 3073, which allows a magistrate to transfer PERF service by paying an amount equal to the six percent contribution rate established for the 1985 Judges' Retirement System with an offset for the amount in the magistrate's PERF annuity savings account. PD 3073 also provides that the state contribute to the 1985 Judges' Retirement System the remaining amount determined necessary to amortize the magistrate's PERF service liability over a period not to exceed ten years with an offset equal to the present value of the magistrate's PERF retirement benefit. .

If PD 3073 were enacted and all eligible PERF service credit was transferred to the Judges' Retirement System, Mr. Todd estimated the following impacts on the Judges' Retirement System:

• A net total increase in the unfunded accrued liability of $13.7 million.
• A 2.7% decrease in the funded status, from 69.3% to 66.6%.
• An annual state contribution of $ 1.8 million to amortize the PERF service liability over 10 years.

The savings to PERF from the transfer were estimated as follows:

• A decrease of $2.1 million in the unfunded accrued liability.
• A decrease of $ 428,896 in annual funding.

Mr. Todd also estimated that the total projected benefit payments to magistrates from the Judges' Retirement System resulting from the transfer would increase from $151,739 in 2011 to $1,546,411 in 2018 with continuing increases thereafter.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Commission made the following recommendations:

A. Preliminary Drafts of Proposed Legislation

The Commission unanimously recommended PD 3082 for introduction in the 2010 session of the General Assembly. PD 3082 allows certain PERF and TRF members to elect to withdraw the member's annuity savings account if the member has separated from employment and has not been employed in a covered position for at least 30 days.

The Commission unanimously recommended PD 3137 for introduction in the 2010 session of the General Assembly. PD 3137 authorizes PERF and TRF to adopt rules to allow a member who designates more than one beneficiary to allocate benefit shares in percentage increments. Mr. Larson, representing ISEA, spoke in support of the proposal.

The Commission unanimously recommended PD 3166 for introduction in the 2010 session of the General Assembly. PD 3166 allows an active member of the 1977 Fund who is eligible to receive an unreduced retirement benefit to elect to receive, at retirement, a partial lump sum distribution equal to the member's monthly benefit times the member's years of creditable service in exchange for an actuarially reduced monthly benefit.

The Commission unanimously recommended PD 3070 for introduction in the 2010 session of the General Assembly. PD 3070 provides that the monthly retirement benefit received by a 1977 Fund member may not be decreased by an annual cost of living adjustment.

The Commission unanimously recommended PD 3136 for introduction in the 2010 session of the General Assembly. PD 3136 requires the PERF board, one time before January 1, 2015, and every five years thereafter, to evaluate the statewide physical and mental examination standards used by the 1977 Fund.

B. Recommendations

The Commission voted unanimously to recognize TRF's need to further address the time frame for which a school corporation, township, or institution may submit a late report or payment to TRF without incurring a fine. However, the Commission does not have recommended language to address the issue.

The Commission voted unanimously that further study is needed regarding a magistrate's transfer of PERF service credit to the 1985 Judges' Retirement System.

C. Final Report

The Commission voted unanimously to accept the draft copy of the final report with the understanding that action taken at the Commission's last meeting on October 19th would be included in the final report.

W I T N E S S L I S T

Steve Barley, Public Employees’ Retirement Fund
Craig Bobay, Indiana Judges’ Association
Kathryn Cimera, Public Employees’ Retirement Fund
Rhonda Cook, Indiana Association of Cities and Towns
Tom Davidson, Indiana State Teachers’ Retirement Fund
Amy Flack, Krieg DeVault
Ken Gilliam, Indiana Fire Chiefs Association
Tom Hanify, Professional Firefighters’ Union of Indiana
Sean Keefer, Indiana Department of Labor
David Larson, Indiana State Employees Association
Richard Lenar, McCready & Keene
Terren Magid, Public Employees’ Retirement Fund
Tom Miller, Professional Firefighters' Union of Indiana
Bill Murphy, Retired Public Employees Association
Nancy Papas, Indiana State Teachers’ Association
Rick Ruble, Indiana Department of Labor
Christopher Ruhl, Indiana State Budget Agency
Steve Russo, Indiana State Teachers’ Retirement Fund
Andrew Thomas, Indiana Retired Teachers Association
Doug Todd, McCready & Keene